IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3391 of 2006

Mohamed Mama & ors. Petitioners
Vs.
Dr.Kananjar Raghurama Shetty & ors. Respondents

Mr.Chinoy Balsara, Sr.Counsel with Mr.J.S.Saluj i/b M/s.M.V.Kini & Co. for petitioners.

Mr.P.K.Dhakephalkar, Sr.Counsel i/b. M/s. Dhru & Co. for respondent nos.2 to 5.

CORAM: B.H.MARLAPALLE,J.

July 26, 2006.

P.C.

1. Heard the learned counsel for the respective parties. This petition filed under Article 227 of the Constitution arises from the order passed by the learned Judge of the Small Causes Court at Mumbai on 21/3/2006 thereby discharging the Notice i.e. Interim Notice No.153 of 2006 filed in RAE Suit No. 676/1152 of 2002.

2. The respondents claim to be the Trustees of Baun Foundation Trust which is registered as a Public Charitable Trust under the Bombay Public Trusts Act, 1950 and they filed RAE Suit No.676/1152 of 2002 for the eviction of defendant no.1 and his family members from the suit premises which are part and parcel of

the Trust property, on the ground that the Trust needed the premises for its bona fide requirement i.e. to expand the hospital in the adjoining building at 95, August Kranti Marg, Mumbai as well as for residence of their doctors. It further claims that out of the 22 tenants, 20 of them have vacated and in respect of the two tenants the proceedings have been instituted before the Small Causes Court for eviction.

3. The petitioners-defendants filed their Written Statement and opposed the suit. The Written Statement was filed on or about 4th September 2002. While the plaintiffs' witness was in the witness box and under cross-examination, certain questions were asked to him regarding the composition of the Trust and the present Trustees and it is alleged that based on these replies Interim Notice was taken out on or about 24th January 2006 praying for the following three additional issues:

(i) Whether the plaintiffs prove that they are the present validly, appointed Trustees of Baun Foundation Trust?

(ii) Whether the plaintiffs prove that they are the owners and landlords of the suit property?

(iii) Whether the suit is bad in law for non-joinder of necessary, the other heirs and legal representatives of late Mrs.Sarabai A. Mama (being the daughters of late Mrs. Sarabai A. Mama).

. The plaintiffs filed their Say to the said interim notice on or about 1st February 2006 and opposed the same. After hearing both the parties the learned Judge of the Small Causes Court was pleased to pass the impugned order.

4. The learned Senior counsel for the petitioners has invited my attention to Order XIV, Rules 3 and 5 of CPC, the averments made in the plaint as well as the written statement and the contents of the interlocutory notice filed by them. It was submitted that the trial Court fell in gross errors in rejecting the notice and it ought to have allowed the same by framing the additional issues more so when the additional issues can be framed at any stage and

there were sufficient reasons demonstrated by the defendants to frame the additional issues.

5. There is no doubt that the trial Court had framed three issues on 12/11/2002 and they read as under:

(1) Do the Plaintiffs prove that they require the suit premises reasonably and bona fide for their own use and occupation?

(2) To whom the greater hardship will be causes by passing the decree or refusing to pass it?

(3) What decree and order?

No grievance was raised on the order dated 12/11/2002 framing these issues for almost about three years and the notice was taken out only on the basis of the replies given by the plaintiffs' witness during the cross-examination. The additional issues sought to be framed are regarding the composition of the Trust and more particularly whether the plaintiffs continue to be the Trustees validly and whether they are the

owners and landlords of the suit property. The last issue raised was regarding the non-joinder of necessary parties as the defendants.

6. The Trust Deed is placed on record and admittedly the plaint memo shows that all the five plaintiffs have described themselves as the Trustees of Baun Foundation Trust which is a Public Charitable Trust with Registration No.E-2773. The defendants themselves admit in the written statement that the suit property was purchased by the Baun Foundation Trust from Habatullah A. Mama Trust in or about 1991 in terms of the consent decree dated 17th September 1991. Thus the ownership of the suit property by Baun Foundation Trust is not disputed and the Trust is represented by the five trustees. In the Trust Deed placed on record plaintiff no.1 is the permanent trustee. It was claimed by the learned counsel for the petitioners that there ought to be two permanent trustees and in all five trustees. The plaint does not disclose who are the other permanent trustees from the remaining four plaintiffs. The trial Court was, therefore, right in holding that this was not an issue which was required to be considered in a suit for eviction of the tenant when admittedly the

relationship between the Trust and the defendants as landlord and tenants was not disputed at any point of time. The issue of non-joinder of necessary parties was not taken in the written statement filed by the defendants and in any case when the issues were framed by the trial Court on 12/11/2002 the defendants did not challenge the said order. The Suit trial has proceeded and it is at the stage of recording evidence of the plaintiffs. The trial Court cannot be blamed for its observations that the Notice was taken out to cause delay in the trial and the issues sought to be framed by way of additional issues were not relevant for the trial of the suit. As per Order XIV Rule 5 of CPC the trial Court must be satisfied that the additional issues sought to be raised are necessary for deciding the suit and in the instant case the suit is filed by the landlord for the eviction of the tenant. The landlord is the Trust which is represented through its Trustees and the plaintiff no.1 is one of the permanent trustees as per the Trust Deed. It is for the plaintiffs to satisfy the Small Causes Court that they have the locus standi to represent the Trust and so long as they are shown as the Trustees and their names have been intimated to the Asst. Charity Commissioner by

following the procedure required under the Bye-laws or any other Rules, prima facie, there is no reason to doubt their status as the Trustees representing the Trust. The first issue sought to be raised was thus not a necessary issue in an eviction suit and, therefore, the trial Court was right in holding so. The issue whether the plaintiff nos.2 to 5 are validly the Trustees, has to be raised and decided under the Bombay Public Trusts Act, 1950 and it cannot be a necessary issue in a suit for eviction by the Public Trust. Assuming and without accepting, that the status of the plaintiff nos.2 to 5 as Trustees is doubtful, the plaintiff no.1 is one of the permanent Trustees and nothing stops him from representing the Trust in a suit for eviction from the suit premises owned by the Trust.

7. Hence the view taken by the learned Judge of the Small Causes Court in rejecting the Notice cannot be termed as perverse or palpably erroneous so as to cause interference in this petition under Article 227 of the Constitution. The petition, therefore, fails

at the threshold and the same is hereby rejected summarily. Trial of the suit is expedited and the trial be completed preferably by 31st March 2007.

(B.H.MARLAPALLE,J.)